

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

**IDS PROPERTY AND CASUALTY  
INSURANCE COMPANY,**

**Plaintiff,**

V.

CHARLES H. FELLOWS.

**Defendant.**

C15-2031 TSZ

## ORDER

THIS MATTER comes before the Court on defendant/counterclaimant Charles H. Fellows's motion for attorney fees and costs, docket no. 206. Having reviewed all papers filed in support of, and in opposition to, the motion, the Court enters the following order.

## Background

IDS Property and Casualty Insurance Company (“IDS”) initiated this declaratory judgment action to obtain a ruling that, under a homeowners’ policy issued to Fellows and his former wife, Michaela Osborne, it did not owe coverage for the following losses:

(i) damage to the residence caused by Osborne and her two children, (ii) additional living expenses (“ALE”) necessarily incurred by Fellows to reside elsewhere while the dwelling

1 was uninhabitable, and (iii) theft or other improper disposition of Fellows’s personal  
2 property, including business attire and formal wear. Fellows brought six counterclaims  
3 against IDS. Two of them, for constructive fraud and negligence, were dismissed with  
4 prejudice on IDS’s oral motion pursuant to Federal Rule of Civil Procedure 50(a). See  
5 Minute Order at ¶¶ 1(a) & (b) (docket no. 198). In addition, all counterclaims premised  
6 on the lost business attire and formal wear were dismissed. See id. at ¶ 1(c). After a  
7 six-day trial, the jury rendered a verdict in favor of Fellows on his four remaining  
8 counterclaims, for breach of contract, violation of the Insurance Fair Conduct Act  
9 (“IFCA”), violation of Washington’s Consumer Protection Act (“CPA”), and insurance  
10 bad faith. See Verdict (docket no. 201). Based on the jury’s factual findings, the Court  
11 ruled against IDS on its claim for declaratory relief, holding that coverage is owed for the  
12 damage to residence caused by Osborne and/or her children, as well as for Fellows’s  
13 related ALE. See Order (docket no. 204). Judgment was entered in favor of Fellows and  
14 against IDS with respect to coverage and in the following amounts: (i) \$164,798.24 in  
15 contract damages; (ii) \$494,394.72 in increased damages under the IFCA; (iii) \$102,600  
16 in actual damages on the CPA and bad faith counterclaims; (iv) \$10,000 in increased  
17 damages under the CPA; and (v) \$145,000 in noneconomic damages on the bad faith  
18 counterclaim, for a total of \$916,792.96, together with costs to be taxed as set forth in  
19 Local Civil Rule 54(d) and post-judgment interest. Judgment (docket no. 205).

20       The pending motion for attorney fees and costs was filed before IDS sought  
21 judgment as a matter of law or, in the alternative, a new trial or remittitur. The Court  
22 has since denied IDS’s post-judgment motions, see Order (docket no. 241), and IDS has  
23

1 appealed, see Notice (docket no. 243). The Court, however, continues to have  
2 jurisdiction to resolve the issues of attorney fees and costs. See Masalosalo v. Stonewall  
3 Ins. Co., 718 F.2d 955 (9th Cir. 1983). Fellows seeks: (i) \$32,876 for legal services  
4 provided by Lether & Associates PLLC, as well as deposition and trial testimony given  
5 by Thomas Lether; (ii) \$626,523.50 for work performed by Keller Rohrback L.L.P.,  
6 taking into account agreed reductions and fees incurred after the pending motion was  
7 filed; and (iii) \$88,399.91 in costs. Fellows also requests a multiplier of 2.0 with respect  
8 to the fees associated with Keller Rohrback's efforts.

9 **Discussion**

10 Both the IFCA and the CPA authorize the Court to award attorney fees and costs  
11 to Fellows. Because the jury found an unreasonable denial of a claim for coverage or  
12 payment of benefits, see Verdict (docket no. 201); Instruction No. 14 (docket no. 196),  
13 the IFCA allows Fellows to recover "reasonable attorneys' fees and actual and statutory  
14 litigation costs, including expert witness fees." RCW 48.30.015(3). The CPA entitles  
15 Fellows to "the costs of the suit, including a reasonable attorney's fee." RCW 19.86.090.  
16 The Court may also grant Fellows reasonable attorney fees pursuant to Olympic S.S. Co.  
17 v. Centennial Ins. Co., 117 Wn.2d 37, 811 P.2d 673 (1991), which holds that "[a]n  
18 insured who is compelled to assume the burden of legal action to obtain the benefit of its  
19 insurance contract is entitled to attorney fees." Id. at 54. For purposes of Olympic  
20 Steamship, reasonable attorney fees include "expenses necessary to establish coverage,"  
21 including expert witness fees. Panorama Vill. Condo. Owners Ass'n Bd. of Dirs. v.  
22 Allstate Ins. Co., 144 Wn.2d 130, 143-45, 26 P.3d 910 (2001). In response to the pending  
23

1 motion, IDS has disputed the reasonableness of both the attorney fees and costs requested  
2 by Fellows.

3 **A. Attorney Fees**

4 When a fee-shifting statute is silent concerning how reasonable attorney fees  
5 should be calculated, Washington courts generally employ the lodestar method. See  
6 *Brand v. Dep't of Labor & Indus.*, 139 Wn.2d 659, 666, 989 P.2d 1111 (1999). The  
7 lodestar method involves two steps: first, computing a lodestar amount by multiplying a  
8 reasonable hourly rate by the number of hours reasonably expended on the matter; and  
9 second, adjusting the lodestar figure either up or down to reflect factors that have not  
10 already been taken into account, namely the contingent nature of success and the quality  
11 of the work performed. See id.; see also Bowers v. Transamerica Title Ins. Co., 100  
12 Wn.2d 581, 593-99, 675 P.2d 193 (1983) (quoting *Miles v. Sampson*, 675 F.2d 5, 8 (1st  
13 Cir. 1982), and citing *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980)). The Court  
14 is not bound by the lodestar value, but rather, is charged with making “an independent  
15 decision” as to what represents a reasonable amount of attorney fees. Nordstrom, Inc. v.  
16 Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). With regard to reasonableness,  
17 an attorney’s billing records, although relevant, are “in no way dispositive.” Id. The fee  
18 applicant bears the burden of proving the reasonableness of the amount requested, Scott  
19 Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993), and of justifying any  
20 upward deviation from the lodestar result, see Bowers, 100 Wn.2d at 598.

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1        **1. Lether & Associates**

2            In this action, Lether & Associates never appeared as counsel of record on  
3 Fellows's behalf, but the firm represented Fellows until December 31, 2015, the day after  
4 this action was commenced, in extrajudicial efforts to obtain coverage for him under the  
5 homeowners' policy at issue. With respect to those services, Fellows owes fees pursuant  
6 to a written agreement with Lether & Associates, which sets forth a rate of \$325 per hour  
7 for Thomas Lether's services and a rate of \$275 per hour for the work of associates. See  
8 Ex. A to Lether Decl. (docket no. 209-1). The fee agreement contemplated that Fellows  
9 would be responsible for compensating Lether & Associates not only for its legal  
10 representation, but also for any time reasonably spent transferring the matter to another  
11 attorney. See id.

12            With respect to the period from September 10, 2015, to December 31, 2015,  
13 IDS challenges several billing entries. See Hill Decl. at ¶ 4 (docket no. 226). Having  
14 reviewed the explanations provided by Lether & Associates, see Colito Decl. at ¶¶ 4-9  
15 (docket no. 234), the Court is satisfied that all but three (3) of IDS's objections lack  
16 merit. The Court agrees with IDS that Fellows is not entitled to fees for time spent  
17 pursuing contempt proceedings against Osborne or on the unsuccessful personal property  
18 claim, and the 0.6 hours (\$165) recorded on November 3, 9, and 17, 2015 will be  
19 excluded.

20            As to billing entries after December 31, 2015, IDS has taken the position that no  
21 fees are owed because Lether & Associates did not represent Fellows after such date, and  
22 that, with regard to time expended by Thomas Lether in his capacity as a fact witness,

1 which might be treated as a litigation cost, Fellows has waived any recovery. The Court  
2 is of a different view. The Court concludes that, with one exception,<sup>1</sup> the services  
3 rendered in January, February, and March 2016 were necessary to transfer the  
4 representation to Keller Rohrback, and Fellows will be awarded fees for such efforts.  
5 With regard to Lether's deposition, trial testimony, and related preparations, the Court  
6 rejects the notion that Fellows's request for attorney fees operates as a waiver of the right  
7 to have such time compensated as witness fees. The Court treats Fellows's motion as  
8 seeking reimbursement of expenses associated with Lether's role as a witness, and  
9 addresses the merits of such request in the next section concerning costs.

10 For the foregoing reasons, the following amounts are awarded to Fellows as  
11 reasonable attorney fees for legal services provided by Lether & Associates:

September 2015	\$2,325.50
October 2015	\$1,667.00
November 2015	\$2,440.00
December 2015	\$2,059.50
January 2016	\$3,324.50
February 2016	\$302.50
March 2016	\$2,532.00
<b>TOTAL</b>	<b>\$14,651.00</b>

21  
22 <sup>1</sup> The 0.2 hours (\$65) spent on January 27, 2016, in a telephone call with Bruce Winchell concerning  
IDS's attorney, Daniel Thenell, has been excluded. See Ex. B to Lether Decl. (docket no. 209-2 at 19).  
23

1           **2. Keller Rohrback**

2       With regard to the attorney fees sought for work performed by Keller Rohrback,  
3   IDS challenges the reasonableness of both the requested hourly rates and the amount of  
4   time spent on this matter. Some of IDS's arguments have merit and others do not.

5           **a. Rates**

6       Keller Rohrback's services were provided in three different calendar years, 2015,  
7   2016, and 2017, but Fellows seeks fees based on the rates charged in 2017. IDS has not  
8   objected to the use of current rather than historic rates in calculating the lodestar, and  
9   applying current rates is supported by Ninth Circuit jurisprudence. *See Gates v.*  
10   *Deukmejian*, 987 F.2d 1392, 1406-07 (9th Cir. 1992). With respect to the rates of the  
11   various members of the Keller Rohrback firm who worked on this matter, IDS disputes  
12   only those of Birk and Smart. Although, as IDS observes, Birk's rate for 2017 is higher  
13   than what Lether, a more experienced attorney, charges, *see* Lether Decl. at ¶ 3 (docket  
14   no. 209) (\$395/hour), the Court is persuaded that Birk's rate is nevertheless consistent  
15   with the prevailing rates in the local legal community for comparable work, and with the  
16   range of rates applied in the last few years when the Court has computed attorney fees.  
17   *See Kroneman v. Country Mut. Ins. Co.*, No. C14-1223 TSZ, Talmadge Decl. at ¶ 5  
18   (docket no. 94 at 19) (offering declarant's rate of \$400/hour for comparison) & Minute  
19   Order at ¶ 1(d) (docket no. 110) (W.D. Wash. Jan. 12, 2016) (awarding \$350/hour for  
20   lead counsel); *see also Straitshot Commc 'ns, Inc. v. Telekenex, Inc.*, 2012 WL 5880293  
21   at \*3 (W.D. Wash. Nov. 20, 2012) (applying rate of \$425/hour for partners).

1 Smart's rate for 2017, however, seems excessive. Smart has indicated that over  
2 ninety percent (90%) of his work is performed on a contingency basis, which he believes  
3 reflects the inability of most of his clients to afford an attorney at any price. Smart Decl.  
4 at ¶ 10 (docket no. 208). Thus, Smart's billing rates are not routinely tested by the  
5 crucible of the marketplace, and the Court is reluctant to view them as what a reasonable  
6 homeowner would be willing to pay to pursue a first-party insurance coverage claim.  
7 The Court will apply a rate of \$600 per hour for Smart's services in this matter, which is  
8 reasonable in light of Smart's experience, the nature of his practice, and the type of  
9 litigation at issue.

10       **b.     Services**

11       IDS faults Keller Rohrback for (i) engaging in block billing, (ii) charging for  
12 intra-office meetings, (iii) including time spent on clerical or administrative tasks, and  
13 (iv) seeking payment for excessive, redundant, or unnecessary hours. IDS appears to  
14 propose reducing by half (50%) every block-billed entry in which an objectionable or  
15 non-compensable task appears, citing *Lehman v. Nelson*, 2015 WL 11233094 (W.D.  
16 Wash. Aug. 4, 2015), *aff'd in part & rev'd in part*, 862 F.3d 1203 (9th Cir. 2017)  
17 (vacating award of attorney fees). The Ninth Circuit, however, has discouraged blanket  
18 or across-the-board deductions for block billing, *see Welch v. Metro. Life Ins. Co.*, 480  
19 F.3d 942, 948 (9th Cir. 2007), and the Court declines to adopt such approach.

20       Moreover, Birk, who spent far more time on this case than any other timekeeper at  
21 Keller Rohrback, did not engage in block billing. Instead, Birk consistently identified  
22 discrete efforts and the time associated therewith, often recording multiple entries on the  
23

1 same day.<sup>2</sup> See Hensley v. Eckerhart, 461 U.S. 424, 437 & n.12 (1983) (a lawyer should  
2 “maintain billing time records in a manner that will enable a reviewing court to identify  
3 distinct claims”).

4       IDS contends that Keller Rohrback should not be paid for intra-office meetings.  
5 The Court disagrees. To the extent that Smart and Birk delegated time-consuming work  
6 to associates or paralegals with lower billing rates, the relatively small amount of time  
7 they spent assigning tasks and reviewing the results operated to IDS’s advantage by  
8 producing overall lower fees. In addition, in numerous instances, when Smart and Birk  
9 conferred with each other, only one of them billed for such time, alleviating any  
10 significant concern about duplicative entries. Finally, unlike in Welch (which was cited  
11 in Lehman, the case on which IDS relies), in which the experienced attorney who was  
12 seeking fees had “assumed sole responsibility for several hundred” similar cases and was  
13 therefore not compensated for time spent in intra-office conferences, see 480 F.3d at 949  
14 (emphasis added), in this matter, a team of individuals at Keller Rohrback worked  
15 together to conduct discovery and motion practice, prepare for trial, and obtain a  
16 favorable verdict. A reasonable amount of intra-office communication was required and  
17 is recoverable.

18       Keller Rohrback is not entitled, however, to compensation for non-legal services,  
19 purely clerical or administrative tasks, or time spent on unsuccessful claims or arguments  
20

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21       <sup>2</sup> For example, on February 5, 2016, Birk billed for this matter on four (4) different occasions, once for  
1.2 hours (reviewing correspondence from Thenell), again for 0.6 hours (finalizing amended answer),  
22 then for another 0.2 hours (editing Rule 30(b)(6) deposition notice), and finally for 0.7 hours (emailing  
opposing counsel about deposition scheduling). See Ex. A to Birk Decl. (docket no. 235-1 at 6).

1 or on matters unrelated to the IFCA, CPA, or insurance bad faith claims.<sup>3</sup> The Court has  
2 carefully and thoroughly reviewed the spreadsheets submitted by Keller Rohrback, see  
3 Ex. B to Smart Decl. (docket no. 208); Exs. A & B to Birk Decl. (docket no. 235), as well  
4 as IDS's specific objections, see Hill Decl. at ¶ 5 (docket no. 226), and concludes that the  
5 following fees are reasonable, given the nature of the counterclaims on which Fellows  
6 prevailed, the course of the proceedings, the results achieved at trial and post judgment,  
7 and the purposes underlying the IFCA, the CPA, and the *Olympic Steamship* doctrine.

Timekeeper <sup>4</sup>	Hours	Rate	Fees
William Smart	265.6	\$600/hr	\$159,360.00
Ian Birk	522	\$475/hr	\$247,950.00
Isaac Ruiz	5.0	\$475/hr	\$2,375.00
Kathryn Knudsen	202.8	\$310/hr	\$62,868.00
Gabe Verdugo	25.9	\$310/hr	\$8,029.00
Nicole Dyakanoff	205.8	\$250/hr	\$51,450.00
<b>TOTAL</b>			<b>\$532,032.00</b>

14

15 <sup>3</sup> The Court has excluded fees associated with attempts to identify alternative housing for Fellows,  
locating deposition exhibits or transcripts, intra-office meetings about scheduling, cleaning the witness  
16 room, efforts to disparage opposing counsel (Thenell), and contempt proceedings against Osborne.  
Fellows has conceded that he may not recover fees connected with unfiled motions or motions on which  
17 he did not prevail, but he has not discounted for motions or oppositions that were partially unsuccessful,  
as to which he is entitled to only a pro rata share of the correlated fees, and the Court has reduced the  
hours at issue accordingly.

18 <sup>4</sup> The Court has not awarded fees for time billed by associate Beth Strosky, paralegals Paige Lewis and  
Shannon McKeon, or information specialists Jennifer Hill, John Evans, and Carly Eyler. Strosky merely  
19 participated in the "roundtable" or focus group for which Keller Rohrback has agreed not to seek fees.  
See Ex. B to Smart Decl. (docket no. 208-2 at 45-46). Lewis devoted a total of two hours to the matter,  
one of which was spent on a verdict form that was not used by the Court. See id. (docket no. 280-2 at 53).  
All of McKeon's time (2 hours) and over half of Eyler's time (1.6 hours) was dedicated to collecting  
20 material about Thenell, a task for which the Court declines to require IDS to pay fees. See id. (docket  
no. 280-2 at 5, 31). Finally, no credit was given for Eyler's other billings (1.1 hours) or the time charged  
21 by Hill (0.7 hours) or Evans (2.5 hours), which appear to be in the nature of overhead. See id. (docket  
no. 280-2 at 13, 21-22, 51).

1           3.     **Multiplier**

2       Fellows seeks to double *all* of the attorney fees associated with Keller Rohrback's  
3 services, asserting that such departure from the lodestar amount is justified by both the  
4 contingent nature of such fees and the quality of the law firm's work. Fellows has not  
5 made the requisite showing for any multiplier. Contingency enhancements are generally  
6 not available under federal fee-shifting statutes, *City of Burlington v. Dague*, 505 U.S.  
7 557 (1992), and they are reserved for "rare" occasions under Washington law, see  
8 *Sanders v. Washington*, 169 Wn.2d 827, 869, 240 P.3d 120 (2010); see also *Van Pham v.*  
9 *City of Seattle*, 159 Wn.2d 527, 542, 151 P.3d 976 (2007). A contingency adjustment  
10 considers the experience of the marketplace, which indicates that lawyers might not  
11 provide legal representation on a contingent basis unless they receive a premium for  
12 taking the risk that they might not be compensated for their time and effort. See *Bowers*,  
13 100 Wn.2d at 598 (quoting Samuel R. Berger, *Court Awarded Attorneys' Fees: What is*  
14 "Reasonable"? 126 U. PA. L. REV. 281, 324-25 (1977)). Because such enhancement  
15 applies only when a risk exists concerning the recovery of attorney fees, a multiplier may  
16 not be awarded with respect to time expended after payment is assured, for example, on  
17 post-judgment motion practice or in seeking attorney fees and costs. See id. at 599.  
18 Thus, Fellows's request to double the fees related to Keller Rohrback's post-judgment  
19 efforts lacks merit.

20       An increase for the quality of the representation is appropriate only when the  
21 services provided were unusually good, "taking into account the level of skill normally  
22 expected of an attorney commanding the hourly rate used to compute the 'lodestar.'"

1 Bowers, 100 Wn.2d at 599 (emphasis in original, quoting Copeland, 641 F.2d at 893).  
2 The Court is satisfied that neither the contingent-fee agreement between Fellows and  
3 Keller Rohrback nor the manner in which this matter was litigated justify a lodestar  
4 multiplier. In seeking a multiplier, Fellows focuses primarily on IDS's conduct toward  
5 its insured. Fellows, however, was amply compensated by the jury for the improper ways  
6 in which IDS handled the first-party insurance claim at issue, and to the extent that, in  
7 response to Thenell's practices or those of his client, the lawyers at Keller Rohrback  
8 expended more time than would ordinarily be required in a coverage dispute, the lodestar  
9 amount reflects the resulting attorney fees.

10 **B. Costs**

11 **1. Witnesses**

12 Fellows seeks witness fees in the amount of \$49,203.72, related to (i) the work of  
13 his experts Roger Howson, Paul Pederson, and Dennis Smith, (ii) the deposition of IDS's  
14 expert Mark Lawless, (iii) consultation with Jeff Fishbach, a cell data expert, (iv) a real  
15 property appraisal performed by Lamb Hanson Lamb Appraisal Associates, Inc., and  
16 (v) fees paid in connection with the depositions of Robby Dickerson, Michaela Osborne,  
17 and Sheila Phillips. See Ex. E to Smart Decl. (docket no. 208-5 at 53-55 & 57-81). IDS  
18 has specifically disputed only the appraisal fee, on the ground that the appraisal was not  
19 offered as evidence at trial, and the fee associated with Dickerson's deposition, because  
20 she did not testify at trial. The Court agrees that Fellows is not entitled to the appraisal  
21 fee because the value of the home in April 2016, when the appraisal was performed, as  
22 opposed to before August 31, 2015, when the damage was discovered, was not an issue in

1 the case. Fellows may, however, recover the fee related to Dickerson's deposition;  
2 Dickerson, who is Osborne's sister, submitted a declaration in the state court proceedings  
3 between Fellows and Osborne, which was used as an exhibit by IDS in dispositive  
4 motion practice. See Ex. 13 to Thenell Decl. (docket no. 61).

5 Fellows has also asked for fees associated with Thomas Lether's deposition and  
6 trial testimony. Contrary to IDS's assertion, Fellows has not waived this request, and the  
7 Court concludes that such actual litigation costs are recoverable, see RCW 48.30.015(3);  
8 see also Panorama Vill., 144 Wn.2d at 144 (an insured is entitled to "all of the expenses  
9 necessary to establish coverage" (emphasis in original)). The Court awards witness fees  
10 for Lether's deposition, trial, and preparation time, as well as for his firm's efforts in  
11 securing payment, calculated at the rate that Lether (\$325/hr) and his associates (\$275/hr)  
12 charge for legal services, as opposed to the higher rate (\$450/hr) for testimony. See  
13 Lether Decl. at ¶ 3 & Exs. A & B (docket no. 209). No showing has been made that  
14 either Fellows or Keller Rohrback actually paid witness fees to Lether at the higher rate  
15 of \$450 per hour, and Lether's firm will be adequately compensated by fees computed at  
16 its standard rates. The witness fees to be included as litigation costs are reflected in the  
17 following table.

Witness	Costs Awarded
Roger Howson (ICDR, Inc.)	\$10,878.35
Paul Pederson (Pederson Associates, Inc.)	\$5,829.19
Dennis Smith - Attorney at Law	\$26,280.00
Mark Lawless (Constr. Sys. Mgmt. Inc.)	\$510.00

<b>Witness</b>	<b>Costs Awarded</b>																																													
Jeff Fishbach (SecondWave, Inc.)				\$5,000.00																																										
Robby Dickerson (\$67.00); Michaela Osborne (\$46.48); Sheila Phillips (\$42.70)				\$156.18																																										
Thomas Lether (Lether & Associates)				\$11,982.50																																										
<table> <thead> <tr> <th><b>Task</b></th><th><b>Attorney</b></th><th><b>Hrs</b></th><th><b>Rate</b></th><th><b>Amount</b></th></tr> </thead> <tbody> <tr> <td rowspan="2">Preparation for Deposition</td><td>Lether</td><td>6.4</td><td>325</td><td>\$2,080.00</td></tr> <tr> <td>Colito</td><td>1.1</td><td>275</td><td>\$302.50</td></tr> <tr> <td rowspan="2">Deposition</td><td>Lether</td><td>5.7</td><td>325</td><td>\$1,852.50</td></tr> <tr> <td>Colito</td><td>3.0</td><td>275</td><td>\$825.00</td></tr> <tr> <td rowspan="2">Preparation for Trial Testimony</td><td>Lether</td><td>5.8</td><td>325</td><td>\$1,885.00</td></tr> <tr> <td>Colito</td><td>5.2</td><td>275</td><td>\$1,430.00</td></tr> <tr> <td>Trial Testimony</td><td>Lether</td><td>9.9</td><td>325</td><td>\$3,217.50</td></tr> <tr> <td>Declaration Regarding Fees</td><td>Lether</td><td>1.2</td><td>325</td><td>\$390.00</td></tr> </tbody> </table>				<b>Task</b>	<b>Attorney</b>	<b>Hrs</b>	<b>Rate</b>	<b>Amount</b>	Preparation for Deposition	Lether	6.4	325	\$2,080.00	Colito	1.1	275	\$302.50	Deposition	Lether	5.7	325	\$1,852.50	Colito	3.0	275	\$825.00	Preparation for Trial Testimony	Lether	5.8	325	\$1,885.00	Colito	5.2	275	\$1,430.00	Trial Testimony	Lether	9.9	325	\$3,217.50	Declaration Regarding Fees	Lether	1.2	325	\$390.00	<b>TOTAL:</b>
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				<b>\$60,636.22</b>																																										

2. **Court Reporter and Videographer Charges**

13 Fellows seeks to tax \$22,063.76 in costs for court reporter and videographer  
 14 charges. IDS contends that none of these expenses should be allowed because Fellows  
 15 has not indicated which, if any, of the transcripts or videos were used at trial or in  
 16 connection with successful motions or oppositions. IDS's position ignores the distinction  
 17 between (i) actual costs, which are authorized by the IFCA, and (ii) statutory costs, which  
 18 are more limited than actual costs. Compare RCW 48.30.015(3) with RCW 4.84.010 and  
 19 RCW 4.84.090; see also 28 U.S.C. § 1920(2) (allowing fees "for printed or electronically  
 20 recorded transcripts necessarily obtained for use in the case"). Fellows is awarded costs  
 21 associated with deposing IDS's witnesses or potential witnesses and obtaining transcripts

1 of the depositions of his own witnesses, which total \$20,378.26. See Ex. E to Smart  
2 Decl. (docket no. 208-5 at 83, 85-95, 97, 99-103, 105-14). Transcript charges, however,  
3 for discovery or telephonic conferences, as well as for opening statement on an expedited  
4 basis, are excluded.

5       **3. Document Reproduction**

6           Keller Rohrback paid vendors for the reproduction of trial exhibits, some of which  
7 were mounted onto foam core. See id. (docket no. 208-5 at 117-18). The firm should be  
8 reimbursed for these costs. Keller Rohrback also paid vendors to print almost 2,000  
9 electronic documents onto paper (also known as “blowback”) and to perform over 9,000  
10 Tag Image File Format (“TIFF”) conversions. See id. (docket no. 208-5 at 119-20).  
11 These activities did not occur near the date of trial, and the firm has not explained  
12 whether they were related to discovery or motion practice and, if the latter, whether the  
13 motion or opposition was successful. These costs, in the amount of \$874.89, are  
14 therefore excluded.

15           With respect to the requested \$8,430.90 in in-house document reproduction  
16 charges, the Court agrees with IDS that insufficient information has been provided  
17 concerning whether such expenses were related to counterclaims or motions on which  
18 Fellows prevailed. Because the bulk of the color copies were generated during the month  
19 leading up to trial, see id. (docket no. 208-5 at 44-46), most of those costs (*i.e.*, from  
20 March 3, 2017, forward) will be allowed, but the other copying charges, see id. (docket  
21 no. 208-5 at 5-43), will be reduced by forty percent (40%) to reflect the extent to which  
22 they were likely related to unsuccessful claims, arguments, motions, or oppositions. The

1 amounts awarded for document reproduction are therefore as follows: \$1,389.46 for trial  
2 exhibits produced by vendors, \$1,282.50 for in-house color copies, and \$4,159.65 for all  
3 other in-house document reproduction, for a total of \$6,831.61.

4       **4.     Legal Research**

5           In seeking \$3,229.55 in Westlaw charges, *see id.* (docket no. 208-5 at 51), Keller  
6 Rohrback offers no evidence that such costs were incurred in the pursuit of successful  
7 counterclaims. The Court will again use the forty percent (40%) figure to account for the  
8 counterclaims and motions practice on which Fellows did not prevail, and Fellows shall  
9 receive \$1,937.73 for Westlaw expenses.

10       **5.     Miscellaneous Charges**

11           Fellows also seeks messenger, delivery, and process service fees, postage, long  
12 distance and conference calling charges, parking fees, and travel and meal expenses. IDS  
13 has not specifically disputed any of these costs, and the Court will allow all but the  
14 parking fees incurred by Keller Rohrback personnel merely at the firm's office, *see id.*  
15 (docket no. 208-5 at 127-34), and the expenses of attorneys' meals on non-trial days, *see*  
16 *id.* (docket no. 208-5 at 135-37). The following costs, computed from the receipts and  
17 other documentation provided, *see id.* (docket no. 208-5 at 2-3, 47-50, 122-25, 139-42),  
18 are allowed:

<b>Item of Cost</b>	<b>Amount</b>
Messenger and Delivery Fees	\$570.34
Process Service Fees	\$367.00
Postage	\$32.44

<b>Item of Cost</b>	<b>Amount</b>
Long Distance and Conference Calling	\$5.98
Parking and Mileage (settlement conference)	\$73.20
Travel (airfare, hotel, meals, taxis, and parking)	\$1,117.78
<b>TOTAL</b>	<b>\$2,166.74</b>

## **Conclusion**

For the foregoing reasons, the Court ORDERS as follows:

1. Defendant Charles H. Fellows's motion for attorney fees and costs, docket no. 206, is GRANTED in part and DENIED in part.

2. Attorney fees in the following amounts are awarded to Fellows pursuant to the Insurance Fair Conduct Act, Washington's Consumer Protection Act, and *Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), and its progeny:

Lether & Associates                   **\$14,651.00**

Keller Rohrback                       **\$532,032.00**

Because the fees for the legal services of Lether & Associates were incurred before Keller Rohrback began representing Fellows, they should not be included in calculating the contingent fee owed to Keller Rohrback. See Agreement at ¶ 4 (docket no. 222-1).

3. Costs in the total amount of **\$91,950.56** are awarded to Fellows. All costs, including witness fees owed to Lether & Associates, may be considered in computing the contingent fee owed to Keller Rohrback. See id.

1           4. The Clerk is DIRECTED to enter a supplemental judgment consistent with  
2 this order and to send a copy of such supplemental judgment and this order to all counsel  
3 of record.

4           IT IS SO ORDERED.

5           Dated this 14th day of September, 2017.

6           Thomas S. Zilly

7           Thomas S. Zilly  
8           United States District Judge

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